

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MAURO IBARRA-MONTANEZ,	§	
# 39553-177,	§	
Petitioner,	§	
	§	
v.	§	3:11-CV-0265-K
	§	(3:09-CR-291-K(31))
UNITED STATES OF AMERICA,	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

On February 10, 2011, Petitioner Mauro Ibarra-Montanez filed a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255. Petitioner is presently incarcerated at the Federal Correction Institution (FCI) in Seagoville, Texas. The Court did not issue process in this case pending preliminary screening. *See Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts.*

On September 21, 2010, following his guilty plea to conspiracy to possess with the intent to distribute methamphetamine, the Court sentenced Petitioner to 100 months' imprisonment and a five-year term of supervised release. Petitioner's direct criminal appeal remains pending before the United States Court of Appeals for the Fifth Circuit. *See Ibarra-Montanez v. United States*, No. 10-10966 (briefing notice issued on January 10, 2011).

It is well established that a district court should not entertain a § 2255 motion during the pendency of a direct appeal because "disposition of the appeal may render the

motion moot.” *Welsh v. United States*, 404 F.2d 333 (5th Cir. 1968), abrogated on other grounds, *United States v. Ortega*, 859 F.2d 327 (5th Cir. 1988); see also *Jones v. United States*, 453 F.2d 351, 352 (5th Cir. 1972). Accordingly, the § 2255 motion should be dismissed without prejudice to Petitioner reasserting it after the Fifth Circuit has ruled on his direct criminal appeal.

IT IS THEREFORE ORDERED that the § 2255 motion is DISMISSED without prejudice to Petitioner reasserting it after the United States Court of Appeals for the Fifth Circuit has ruled on his direct criminal appeal.

SO ORDERED.

Signed this 15th day of February, 2011.

Ed Kinkeade
ED KINKEADE
UNITED STATES DISTRICT JUDGE